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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,977	06/02/2000	Masanao Fujieda	04917.0075	3091

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EXAMINER
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HESELTINE, RYAN J

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/584,977

**Applicant(s)**

FUJIEDA, MASANAO

**Examiner**

Ryan J Hesselline

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Response to Arguments***

1. The rejections and objections of claims 1-18 are rendered moot by applicant's cancellation of those claims.
2. Applicant's arguments with respect to claims 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19, 22, 23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom et al. (USPN 4,641,349, cited on applicant's IDS), hereafter Flom, in view of L'Esperance (USPN 4,669,466, previously cited).
5. Regarding claim 19, Flom discloses an ophthalmic system comprising an ophthalmic apparatus, wherein the ophthalmic apparatus includes: optometry means for examining or measuring a patient's eye to obtain measurement data (pupil size) on the eye (column 5, line 22-37); first photographing means (video camera; column 7, line 10-15) for photographing the eye (column 4, line 66-68); first identification code acquiring means for extracting a characteristic (descriptor), which is inherently unique to the eye (column 4, line 37-45), by processing an image of the eye photographed by the first photographing means and obtaining a first identification code (descriptor set) based on the extracted characteristic (column 7, line 44-64);

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and storage means for storing the obtained measurement data (column 5, line 42-44, 53-56) in association with the obtained first identification code (column 7, line 10-15), and second photographing means for photographing the eye (column 7, line 15-20); second identification code acquiring means for extracting the characteristic by processing an image of the eye photographed by the second photographing means and obtaining a second identification code based on the extracted characteristic (column 7, line 44-57); comparison means for comparing the first identification code received from the ophthalmic apparatus and the obtained second identification code to judge whether the first identification code and the second identification code match (column 7, line 57-64); and informing means for informing a result of the comparison by the comparison means (column 12, line 11-17).

6. Flom discloses that the optical system includes means for placing the target at any desired optical distance to correct for the refraction or bending of light rays for different subjects (column 8, line 37-43), but does not disclose that the ophthalmic system includes a surgery apparatus or that the measurement data includes refractive data on the eye necessary for refractive correction and that surgical data is generated based on the obtained measurement data. L'Esperance discloses a method and apparatus for analysis and correction of abnormal refractive errors of the eye wherein measurement data (corneal topography, axial length, intraocular pressure, etc.) includes refractive data on the eye necessary for refractive correction and that surgical data is generated based on the measurement data (column 5, line 29-58). L'Esperance further discloses a surgery apparatus including: surgery means (laser sculpting means G) for performing surgery (corrective operation) for the refractive correction on the eye based on the surgical data (column 7, line 33-51). It would have been obvious to one of ordinary skill in the

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art at the time the invention was made to generate surgical correction data based on measured refractive data necessary for refractive correction as taught by L'Esperance in order to correct a patient's eye for refractive errors by providing an ophthalmological surgeon with corneal thickness and topological data for a particular abnormal eye in order to determine the depth of surgical incision (column 2, line 58-62), and to record identifying data of the patient such as the age and sex of the patient and other factors which would allow close comparison of the evaluated eye with an idealized model (column 5, line 29-41).

7. Regarding claim 23, Flom discloses an ophthalmic apparatus comprising: input means for inputting measurement data (column 5, line 22-37) on a patient's eye or surgical data generated based on the measurement data (L'Esperance column 7, line 33-51) in association with a first identification code (descriptor set; column 7, line 44-64), the measurement data including refractive data on the eye necessary for refractive correction (L'Esperance column 5, line 29-58), the first identification code being obtained based on a characteristic which is inherently unique to the eye (column 4, line 37-45); surgery means for performing surgery for the refractive correction on the eye based on the surgical data (L'Esperance column 7, line 33-51); photographing means (video camera; column 7, line 10-15) for photographing the eye (column 4, line 66-68); identification code acquiring means for extracting the characteristic by processing an image of the eye photographed by the photographing means and obtaining a second identification code based on the extracted characteristic (column 7, line 44-64); comparison means for comparing the inputted first identification code and the obtained second identification code to judge whether the first identification code and the second identification code match

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(column 7, line 57-64); and informing means for informing a result of the comparison by the comparison means (column 12, line 11-17; see above discussion of claim 19).

8. Regarding claims 22 and 26, Flom discloses that the first and second identification code (descriptor) acquiring means obtain the first and second identification codes (descriptors based on an iris pattern of the eye respectively (column 4, line 37-45, line 66-column 5, line 12; column 7, line 44-51).

9. Claims 20, 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom in view of L'Esperance as applied to claims 19 and 23 above, and further in view of McMillen et al. (USPN 6,296,634, previously cited), hereafter McMillen.

10. Regarding claims 20 and 24, Flom discloses identification means to confirm that an eye is that of a specific individual when the comparison means judges that the first identification code and the second identification code match, but neither Flom nor L'Esperance explicitly disclose that the surgery apparatus further includes permission means for permitting the surgery to be performed by surgery means when first and second identification codes match. McMillen discloses an ophthalmological surgery technique with active patient data card providing the surgery apparatus with identifying data including the serial number of the specific laser surgery system to be used, personal identification number of the surgeon qualified to operate the system, and the prescription of the patient to control the amount and type of laser surgery on a particular patient (column 4, line 54 to column 5, line 7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to control access to an eye surgery apparatus as taught by McMillen in order to ensure that the correct surgical procedure is performed on the

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person for which it was intended, by a person (surgeon) who is authorized and capable of performing it (column 5, line 8-17).

11. Regarding claims 21 and 25, McMillen discloses that the surgery apparatus further includes permission means for permitting (authorizing) the surgical data to be generated based on the obtained measurement data or the surgical data to be used (column 5, line 8-27) when the comparison means judges that the first identification code and the second identification code match (Flom column 12, line 3-10; see above discussion of claims 19 and 23).

12. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flom in view of McMillen.

13. Regarding claim 27, Flom discloses an ophthalmic system comprising a data management apparatus, the system comprising: first identification code acquiring means for photographing an image of a patient's eye, extracting a characteristic, which is inherently unique to the eye, by processing the photographed image (column 4, line 37-45), and obtaining a first identification code (descriptor set) based on the extracted characteristic (column 7, line 44-51); first storage means (credit card, ID card, computer memory) for storing first measurement data on the eye in association with the obtained first identification code (column 12, line 3-10); second identification code acquiring means for photographing an image of the eye (column 7, line 15-20), extracting the characteristic by processing the photographed image, and obtaining a second identification code (descriptor set) based on the extracted characteristic (column 7, line 44-51); comparison means for reading out the first identification code from the first storage means based on the inputted patient identification data and comparing the read first identification

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code and the obtained second identification code to judge whether the first identification code and the second identification code match (column 12, line 3-10); and informing means for informing a result of the comparison by the comparison means (column 12, line 11-17).

14. Flom does not disclose assigning means for assigning patient identification data including *at least one of* a name and an ID number of a patient, and input means for inputting the patient identification data. McMillen discloses the use of a patient data card writer/reader 40 (input unit) designed to interact with an individual patient data card 42, similar to a credit card, having a first surface region for carrying visually readable information such as the name of the patient, card supplier (laser surgery system manufacturer, health care provider, etc.) and any other information desirable for visual presentation (column 4, line 20-29). McMillen further discloses another region 44 reserved for information identifying the authorized bearer or user of the card, such as a fingerprint or photograph of the patient, and an ablation region or target area 45 provided for permanently recording laser beam operating characteristics (column 4, line 29-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to assign patient identification data and input the assigned identification data as taught by McMillen in order to evaluate, control, and enable a laser based ophthalmological surgery system to an operative state and to identify all authorized surgeons, the patient, the patient's past history, desired prescription, or other identifying information regarding permissible surgery to be performed on the patient (column 2, line 55-column 3, line 10).

15. Regarding claim 28, McMillen discloses a measurement unit (laser surgery system 20 including high resolution microscope; column 4, line 10-15), including the second identification code acquiring means, for obtaining second (post operation) measurement data; and second

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storage means, for storing the second measurement data (column 5, line 24-27) in association with the patient identification data and the first identification code (column 5, line 8-24) when the comparison means judges that the first identification code and the second identification code match (Flom column 12, line 3-10; see above discussion of claim 27).

16. Regarding claim 29, Flom discloses that the first and second identification code (descriptor) acquiring means obtain the first and second identification codes (descriptors based on an iris pattern of the eye respectively (column 4, line 37-45, line 66-column 5, line 12; column 7, line 44-51).

### ***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J Hesseltine whose telephone number is 703-306-4069.

The examiner can normally be reached on Monday - Friday, 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on 703-308-6604. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

rjh  
January 21, 2004

  
**JINGGEWU**  
**PRIMARY EXAMINER**